U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A71 596 039 - Los Angeles Date: MAY 29 1996

In re: ADAN LOPEZ-MEDINA

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ana Maria Herrera Murray, Esquire
Pasadena Legal Center
829 North Lake Avenue
Pasadena, California 91104

ON BEHALF OF SERVICE: Patricia M. Corrales
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Entered without inspection

APPLICATION: Suspension of deportation; voluntary departure

I. PROCEDURAL HISTORY

The respondent is a 38-year-old native and citizen of Mexico who entered the United States without inspection in 1986. On February 12, 1993, the Immigration and Naturalization Service issued an Order to Show Cause, charging him with being deportable on that basis, pursuant to section 241(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(1)(B). At an Immigration Court hearing on April 16, 1993, the respondent admitted the factual allegations in the Order to Show Cause and conceded deportability as charged. He stated his intention to apply for suspension of deportation under section 244(a)(1) of the Act, 8 U.S.C. § 1254(a)(1), and for voluntary departure under section 244(e) of the Act, 8 U.S.C. § 1254(e).

The Immigration Judge held a hearing on the respondent's applications on April 24, 1995. In a decision issued at the conclusion of the hearing, the Immigration Judge found the respondent deportable on the charge set forth above and denied his application for suspension of deportation. He granted the respondent a period of voluntary departure, with an alternative order of deportation to Mexico if the respondent failed to depart by the prescribed date. The respondent has appealed from the denial of his application for suspension of deportation. The appeal will be dismissed.

II. EVIDENCE

The respondent is married. His wife and two older children, ages 13 and 12, are citizens of Mexico. Like the respondent, they are in the United States without legal immigration status. His third child, age 5, is a U.S. citizen (Exh. 2, Tr. at 72). He testified that he came to the United States in 1986 after completing 18 years of schooling and working for a time in Mexico. He came with his wife and two older children because he could not support his family adequately on what he was earning in Mexico (Tr. at 71-72). All three of the children are fluent in English and Spanish (Tr. at 76). He has worked full-time in a hospital since 1990. His wife also works full-time. Their combined family income is approximately $24,000 per year. They are healthy, but recently he has been very anxious. He is subject to high blood pressure, and on one occasion he had to visit the emergency room (Tr. at 53, 77-78).

The respondent testified that he and his family are active in their local Catholic parish and that they have many friends in the United States (Tr. at 80-81). He testified that his mother and all his siblings are in the United States in legal immigration status. Some of them had been listed on his Application for Suspension of Deportation (Form I-256A) as living in Mexico, but the respondent stated they have all since come to the United States. He did not, however, have any proof of their legal immigration status (Exh. 2, Tr. at 81-86).

The respondent testified that he has considered leaving his U.S. citizen son with relatives in the United States if he is ordered deported. He stated that he has no family left in Mexico, but possibly some friends. He is terrified at the prospect of returning (Tr. at 95-97). It is possible that his wife and two older children might attempt to remain in the United States and apply for suspension of deportation because they have been here 7 years. If he were deported, the most difficult thing would be the impact on his family: "Mostly for them to stay here or to live with me, that for me would be to destroy my family" (Tr. at 97). Even if the other members of his family come with him if he is deported, he will be separated from his youngest son, who needs both parents if he is to grow up properly (Tr. at 98).

A psychologist also testified concerning the effects of deportation on the respondent and his 5-year-old son. He testified that the respondent has been suffering anxiety and depression over the prospect of deportation and its effect on him and his family (Tr. at 52-53). The psychologist stated that deportation would also be very difficult for the 5-year-old. On the one hand he could suffer separation from his father and possibly other members of his family, and on the other he would be forced to live in a new culture against his wishes and those of

everyone else in his family (Tr. at 57-58). In a written evaluation the psychologist described serious emotional consequences that would result for the child if he were separated from his family, and also related the child's fears about moving to Mexico (Exh. 3-6). The evaluation concludes that if the family becomes fractured and disjointed, it will cause extreme and unusual hardship for the child (Id.).

The 5-year-old child testified briefly as well. He stated that he would be sad if his father were deported, that he wanted to remain in the United States, and that he can speak and understand Spanish (Tr. 103-105).

The Service stipulated to the respondent's good moral character, and therefore several witnesses who had submitted written statements of reference were not called. (Tr. at 107, Exh. 3-8). The Service did object, however, to the introduction of translated newspaper articles concerning current conditions in Mexico, because the translations did not contain a certification of accuracy pursuant to 8 C.F.R. § 3.33. The Immigration Judge sustained the objection as to five of the articles (Tr. at 35-39, I.J. at 2-3). One other article was admitted (Exh. 3-7).

III. DECISION OF IMMIGRATION JUDGE

In his decision issued at the conclusion of the hearing, the Immigration Judge reviewed the evidence, including the testimony of the psychologist, and determined that while the respondent had established the required 7-years' residence and had shown his good moral character, he had not shown that his deportation would cause extreme hardship for him or for his 5-year-old child. The Immigration Judge noted that the child was in his first year of formal schooling, is fluent in Spanish and English, and has no medical problems. He concluded that deportation for this child would cause less hardship than that experienced by the children in INS v. Wang, 450 U.S. 139 (1981). In that case the Supreme Court upheld the denial of suspension of deportation despite the fact that the children in that case were older and did not speak the language of the country of deportation (I.J. at 11).

The Immigration Judge acknowledged that the respondent will lose his job, but stated that job loss is normal in such situations. He concluded that the respondent's loss would be comparatively less than that experienced by the aliens in INS v. Wang, supra, and noted that the respondent was bilingual and understood the culture in Mexico (I.J. at 11, 15). The respondent suffers no serious medical problems, the Immigration Judge concluded, and although he has experienced anxiety recently, such feelings are normal for persons facing deportation (I.J. at 11). The Immigration Judge discounted the effect of the possible separation of the respondent from his mother and siblings, noting that the

respondent had not proven that they had permission to reside permanently in the United States and that instead there was evidence that some of them resided in Mexico (I.J. at 14).

The Immigration Judge determined that the respondent had also failed to establish that relief was warranted in the exercise of discretion. He noted evidence that the respondent had misrepresented information on his federal tax returns (I.J. at 12-13). He noted that the respondent has no strong ties to organizations in the United States other than the Catholic church, and he observed that the respondent would be able to practice his Catholic faith in Mexico (I.J. at 14-15). He also noted that the respondent has assets of approximately $19,000 that could help him establish a new life in Mexico. (I.J. at 14).

IV. ARGUMENTS ON APPEAL

On appeal, the respondent asserts that the Immigration Judge erred in excluding documents about country conditions in Mexico and that he mischaracterized the respondent's tax filings. The respondent also contends that the Immigration Judge failed to give adequate consideration to the hardship that the child would experience upon his father's deportation. Finally, he argues that the Immigration Judge did not consider the hardship that the respondent would experience at being unable to provide for his children and at being separated from other members of his family. On appeal the Service argues that the Immigration Judge properly excluded the translated articles for failure to comply with 8 C.F.R. § 3.33.

V. DISCUSSION

A. Excluded evidence

The respondent offered translations of six articles concerning country conditions in Mexico (Tr. at 35-39). One of the documents (Exh. 7) consisted of the article in Spanish, an English translation, and a certification by the translator that he is competent to translate the document and that the translation is true and accurate to the best of his abilities. The Immigration Judge accepted this document in evidence (Exh. 3-7). The other five, however, consisted of articles and translations, accompanied by a copy of a certificate of competency for the translator issued by the Administrative Hearing Interpreter Program for the State of California (Respondent's Brief, Exh. A). There was no statement by the translator that he is competent to translate and that the translations are true and accurate to the best of his abilities. Since such requirements are clearly stated in the regulations at 8 C.F.R. § 3.33, the Immigration Judge properly excluded these documents from the record.

B. Eligibility for tax deductions

During the hearing (Tr. at 87-95) and in his decision (I.J. at 12-13) the Immigration Judge questioned the propriety of several tax deductions that the respondent claimed on returns filed with the Internal Revenue Service. On appeal the respondent argues that these deductions were permissible and that the Immigration Judge's suspicion of tax fraud detrimentally influenced his evaluation of the evidence of extreme hardship. We do not consider here whether the respondent properly could claim his undocumented children as dependents several years in a row, or whether he could also claim his niece and mother as dependents. In his opinion, the Immigration Judge found the respondent to be a person of good moral character, and we determine that his discussion of the tax liability is essentially unrelated to the issue of whether the respondent established extreme hardship. We see absolutely no indication that the Immigration Judge's concern about improper tax filings had any effect on his evaluation of the other evidence in this record.

C. Extreme hardship

We confine our analysis of extreme hardship in this case to the effects of deportation upon the respondent and his 5-year-old child. The respondent's wife and two older children are not citizens or lawful permanent residents and therefore, under section 244(a)(1) of the Act, the direct effect of the deportation upon them is not a factor in our analysis. Similarly, although there is evidence that at least some of the respondent's brothers and sisters are lawful permanent residents (Exh. 2), section 244(a)(1) does not permit consideration of any hardship they would suffer should the respondent be deported.

Extreme hardship is not a definable term of fixed and inflexible meaning. Rather, the elements that establish extreme hardship are dependent upon the facts and circumstances of each case. See Matter of Chumpitazi, 16 I&N Dec. 629 (BIA 1978); Matter of Kim, 15 I&N Dec. 88 (BIA 1974); Matter of Sangster, 11 I&N Dec. 309 (BIA 1965).

The Board has enunciated factors relevant to the issue of the extreme hardship determination. These factors include: the length of the respondent's presence over the minimum requirement of 7 years; the respondent's age both at entry and at the time of application for relief; the presence of lawful permanent resident or United States citizen family ties to this country; the respondent's family ties outside the United States; the conditions in the country or countries to which the alien is returnable and the extent of the respondent's ties to such countries; the financial impact of departure from this country; significant conditions of health, particularly when tied to an unavailability

of suitable medical care in the country to which the respondent will return; whether the respondent demonstrates special assistance to the community; and, lastly, the possibility of other means of adjustment of status or future entry into this country. See Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

In considering all factors relevant to a determination of extreme hardship, the Supreme Court has indicated that a narrow interpretation of the term is consistent with the exceptional nature of suspension relief. INS v. Wang, supra; see also Bu Roe v. INS, 771 F.2d 1328 (9th Cir. 1985).

Economic loss alone does not establish extreme hardship, but it is still a factor to consider in determining eligibility for suspension. Jong Shik Choe v. INS, 597 F.2d 168 (9th Cir. 1979). The Board must also consider personal and emotional hardships which result from deportation. Tukhowinich v. INS, 57 F.3d 869 (9th Cir. 1995); Chan v. INS, 610 F.2d 651 (9th Cir. 1979). The most important single factor may be the separation of the alien from family living in the United States. See Mejia-Carrillo v. INS, 656 F.2d 520 (9th Cir. 1981). All relevant factors bearing on extreme hardship must be considered individually and cumulatively. See Santana-Figueroa v. INS, 644 F.2d 1354 (9th Cir. 1981). Although one factor by itself might not support a finding of extreme hardship, all factors considered cumulatively may do so.

1. The respondent

The respondent argues that he had difficulty in the past supporting his family and that should he be deported he "would no longer be able to provide for his children's living expenses including their private schools in the way that he can now" (Respondent's Brief at 23). We recognize that economic conditions in Mexico are likely to result, at least temporarily, in a lower standard of living for the respondent and his family. However, such economic difficulties are a frequent result of deportation, and the respondent has not shown that his would be so severe as to constitute extreme hardship. See Jong Shik Choe v. INS, supra. The respondent has substantial education, has amassed some savings in the United States, and is familiar with the language and culture in Mexico. We do not conclude that he would be totally unable to support his family if he returned to Mexico, and therefore we do not regard the economic adversity as constituting an extreme hardship in this case.

Likewise, although we acknowledge the anxiety that the respondent is currently experiencing over the prospect of deportation, we do not regard his medical condition as evidence that he would suffer extreme hardship if deported. As the Immigration Judge noted, such anxiety is not unusual among persons

in the respondent's circumstances. The record does not contain evidence that the respondent suffers from any condition that would not be treatable in Mexico. Therefore, while noting that the deportation is a source of anxiety, we do not conclude that it will cause extreme emotional hardship.

The third source of hardship identified by the respondent is the separation from family members in the United States. We acknowledge that such separation can be a source of great hardship See Mejia-Carrillo v. INS, supra. In this case, however, no such showing has been made. The respondent testified that even if he were deported, his wife and children might seek to remain in the United States by applying for suspension of deportation. At this moment, however, they have no legal immigration status in this country. Therefore, in the absence of any evidence that they would be entitled to remain legally in the United States, we conclude that they would depart the United States if the respondent were ordered deported. If, however, they elected not to do so and sought instead to remain in the United States, the resulting separation would be a matter of their personal choice to immigrate, not a consequence of his deportation.

The youngest child, of course, is a U.S. citizen and the respondent testified that he might leave the child behind. Although as a U.S. citizen the child has a right to remain in this country even if the other members of his family depart, absent proof of extreme hardship to the child if he returns to Mexico with his family, we would also view such a decision as a matter of parental choice, not as a consequence of deportation. See Matter of Ige, Interim Decision 3230 (BIA 1994). Since, as discussed infra, we conclude that accompanying his family to Mexico would not result in extreme hardship for the youngest child, we conclude that any separation of him from the respondent will not be a forced consequence of the deportation.

In addition to his wife and children, the respondent has other family members in the United States. Although there is conflicting evidence about how many of his relatives actually have legal immigration status in this country (Exh. 2, Tr. at 81-86, I.J. at 14), we acknowledge that the respondent will experience some separation if deportation were to occur. Nevertheless, it is possible that the respondent's mother and siblings could visit and otherwise maintain contact with him, even if he were to be deported to Mexico. Therefore, we find that there is insufficient evidence in the record to permit us to characterize any such separations as constituting extreme hardship for the respondent.

Accordingly, upon our examination of the record we conclude that the respondent has not established that he would suffer extreme hardship if he were to be deported to Mexico.

2. The respondent's son

The fact that the respondent has a U.S. citizen child does not in itself justify suspension of his deportation. See Matter of Correa, 19 I&N Dec. 130 (BIA 1984); Matter of Kim, supra. The fact that economic opportunities and educational or medical facilities for the child are better in the United States than in Mexico does not establish extreme hardship for him. Id. We recognize that families moving from the United States to other countries frequently encounter difficulties in the transition, but those difficulties, even for U.S. citizen children, typically do not constitute extreme hardship under section 244(a)(1) of the Act. Id.

In this case, both the respondent and his spouse are from Mexico and are familiar with the culture. The child is young and in good health. He is fluent in English and Spanish, and his family would be able to practice their Catholic faith in Mexico. His father completed 18 years of schooling in Mexico, and there is no evidence that the child would not also be able to take advantage of educational opportunities there. While the respondent might not be able to support his family at the same standard of living they experienced in the United States, he has education and experience, and there is no reason to conclude that he would not be able to find employment.

We acknowledge that there would be adjustment difficulties for every member of the family, but there is nothing in the record to suggest that the child would experience more severe adjustment problems than other American-born children of Mexican couples in similar situations. We note that the psychologist testified that the child's adjustment to Mexican society would be made more difficult because other members of his family would be going there involuntarily. We do not ignore the impact that family stress might have upon the child's adjustment to life in Mexico. Nevertheless, we do not see evidence in the record that this stress would be of such magnitude as to constitute an extreme hardship.

Finally, accompanying his family to Mexico would necessarily involve some separation from relatives who would remain in the United States. We did not find that such separation would cause extreme hardship in the respondent's case, and the respondent presented no evidence of the anticipated impact of such separation on his child. Therefore, in the absence of such evidence, we conclude that separation from extended family in the United States will not be a source of extreme hardship for the child.

In sum, we recognize that there would be some adjustment difficulties if the child were to accompany his family to Mexico, as there are in every case of children whose parents are deported

from the United States. However, we find no unique circumstances that would elevate this child's anticipated difficulties to the level of extreme hardship.

If, on the other hand, the respondent determines that his wife and children will attempt to remain in the United States, or that just the U.S. citizen child will remain behind, the child will be confronted with the fragmentation of his family. Given the evidence in the record of a strong family relationship, we acknowledge that this separation could easily cause emotional hardship for this U.S. citizen child. Nevertheless, we do not view that unfortunate result as a direct consequence of the deportation. In Matter of Ige, supra, we considered the situation of U.S. citizen children whose parents faced deportation and indicated they might leave their children behind in the United States. As noted above, we stated in Matter of Ige that as a matter of law we consider the critical issue to be whether the children would suffer extreme hardship if they accompanied their parents abroad. In that case, as in the case here, we found that no extreme hardship would ensue if the children went with their parents. We concluded, therefore, that any hardship the children would face if left in the United States would be the result of their parents' choice, not their parents' deportation. Similarly here, we conclude that any hardship the respondent's child would suffer if his parents chose to leave him behind would be a consequence of the parents' decision, not the order of deportation. Matter of Ige, supra.

3. Aggregating the factors

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. See Santana-Figueroa v. INS, supra. In this case, we aggregate the economic and emotional harm that the respondent will suffer with the economic and emotional harm that his child will suffer. We acknowledge that moving or returning to Mexico will pose challenges for each member of the respondent's family. We do not ignore or minimize those challenges and their possible collective impact upon the respondent and his youngest child. Nevertheless, we see no unique circumstances in this case that would raise this aggregate difficulty to the level of extreme hardship. Rather, we conclude that this aggregate difficulty is not distinguishable from that which would typically be experienced by a family deported to Mexico after a 9-year period of life in the United States. Since we find nothing about deportation to Mexico in itself that would constitute extreme hardship for a family in such circumstances, we conclude that extreme hardship has not been proven in the case of the respondent and his child.

VI. CONCLUSION

Because we do not find that deportation would cause the respondent or his son to suffer extreme hardship, we conclude that his application for suspension of deportation must be denied. See Bu Roe v. INS, supra; Jong Shik Choe v. INS, supra; Matter of Anderson, supra. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the Immigration Judge's order.

FOR THE BOARD